

MR. BALDWIN: Right.

PRESIDENT CASSELL: Even if Style and Drafting had had a different interpretation, they could not imply that interpretation by using words whose meanings are clear.

The motion on the floor is to delete "Secretary of State." Those in favor of that motion, please signify by saying aye.

(A chorus of "ayes.")

MS. CORN: I challenge the Chair.

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

MR. LOVE: Division.

PRESIDENT CASSELL: Those in favor of the motion to strike "Secretary of State," signify please by raising your hands.

MR. COOPER: Twelve.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Fifteen.

PRESIDENT CASSELL: The count is 12 for, 15 against; the motion loses.

Mr. Jordan's motion is now before us, which is to delete Section III. Those in favor of the deletion of Section III, signify by raising your hands.

MR. COOPER: Twenty-one.

PRESIDENT CASSELL: The motion carries; Section III is deleted.

MR. MARCUS: Mr. President, did you ask for those who were opposed to that?

MS. CORN: For the record.

PRESIDENT CASSELL: Delegate Simmons?

MR. MARCUS: Mr. President, you are required to ask for those in opposition.

PRESIDENT CASSELL: Delegate Simmons, would you carry on?

MS. SIMMONS: Yes. Section IV --

MR. MARCUS: Point of order, Mr. President. You did not ask for those in opposition.

MR. LONG: Point of order, Mr. President.

PRESIDENT CASSELL: Delegate Simmons, please carry on.

MR. LONG: Point of order, Mr. President.

PRESIDENT CASSELL: Yes?

MR. LONG: I know he's a pain in the neck --

MR. MARCUS: I beg your pardon.

MR. LONG: Please call for the negative vote so we can do it by the book.

PRESIDENT CASSELL: Somehow or other, you have prejudiced me in your favor, sir.

Those opposed to the last motion?

MR. MARCUS: Thank you.

MR. COOPER: Six.

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: Delegate Simmons?

MS. CORN: Point of order, Mr. President.

MS. SIMMONS: "Election and Term of Office of Governor," and to be consistent I'll just help out our Style and Drafting Committee. Since there's no lieutenant governor, it should read "and Secretary of State." "(a) The Governor and Secretary of State shall be ..." In each of the sections under Section IV where you find the words "Lieutenant Governor," since that does not exist, would you please strike it and substitute instead, for purposes of consistency, "Secretary of State?" Is that clear?

MS. CORN: Point of information.

MS. SIMMONS: State your point.

MS. CORN: In IV(a) it is not clear that, necessarily, the governor and the lieutenant governor shall be

— elected together, and you're saying now that they are. I would like to call for a vote on that.

MS. SIMMONS: Mr. President, we have, in (c), that "One vote shall be cast jointly for the candidates for Governor and Secretary of State. The candidates having the highest number of votes shall be the Governor and the Secretary of State. If two or more sets of candidates shall have the highest and equal number of votes for Governor and Secretary of State, a run-off shall be held."

I said if you change each "Lieutenant Governor" to "Secretary of State," you then would have a consistent document.

PRESIDENT CASSELL: That is quite clear now. If read together, items (a), (b) and (c) respond to your question.

MS. SIMMONS: Right.

PRESIDENT CASSELL: Any other questions, please, on Section IV.

MS. CORN: May I move an amendment, please?

PRESIDENT CASSELL: Is there a second?

(No response.)

PRESIDENT CASSELL: There not being a second, it loses.

— Delegate Simmons, do you have a motion on the floor?



MS. SIMMONS: I have a motion that Section IV, "Election and Term of Office of Governor and Secretary of State," be adopted, as corrected.

(The motion was duly seconded.)

PRESIDENT CASSELL: It's moved and seconded that Section IV, as amended, be adopted. Those in favor, please signify by saying aye.

MS. CORN: Can we have discussion, amendments? Point of order, Mr. President.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: I'd like to change number (c). I don't believe that the governor and secretary of state should be elected jointly on the same ticket. How should I do that, strike section (c)?

PRESIDENT CASSELL: Why don't you hold that until you decide? We'll go on to somebody else. Delegate Bruning?

MR. BRUNING: I move to strike section (b) in its entirety on the grounds that I don't believe that there should be limitations on the number of years or terms any elected official should be able to hold.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that section (b) be struck in its entirety. Discussion?

MR. BRUNING: Yes. By striking (b), I would hope I would remove all restraints as to the number of terms, whether consecutively or divided up, that any officer of the state could serve. My argument is simply this: the citizens of the state have the right to elect whomever they want for that office for as long as they want. I would have hated to have been in the position in, let's say, 1940 in which we could not have elected, in a different frame, Franklin Roosevelt for a third or a fourth term and we would have wound up possibly with Wendell Wilkie or somebody else.

PRESIDENT CASSELL: Okay. Further discussion?

MS. GRAHAM: Mr. President?

PRESIDENT CASSELL: Yes, delegate Graham?

MS. GRAHAM: Excuse me. We have done a great deal of research, and in the research that we have done many states have the number of terms that an officer shall serve.

MS. LOCKRIDGE: Twenty-six.

MS. GRAHAM: Twenty-six. I think this is appropriately written so that it does state the number of terms that the governor might serve. I don't see anything wrong with that at all. In fact, I think that's timely and up-to-date for this particular thing that we're doing now.

If we leave it open, a person might come in and

think he's going to stay in there for life.

MS. LOCKRIDGE: That's right.

MS. GRAHAM: And I think we certainly should specify it so they will know, "These are the limits of the terms which you could serve, and you have to get out even if you come back 15 or 20 years later."

PRESIDENT CASSELL: Delegates Barnes, Mason.

MR. BARNES: Yes. I'd like to speak against the amendment because I feel that we need to limit the terms of office of governor in order to prevent bosses and an office for life. I think it's appropriate to have a change in philosophy after a certain period of time. You don't want a person to get too comfortable in the office.

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: Part (b) made sense when there was a governor and a lieutenant governor, and limiting how many terms one could serve in either of those positions made some sense in that context.

However, secretary of state is a different thing. We have a secretary of state who is going to have his own functions in addition to taking the place of the governor if he dies or is incapacitated.

Thinking back to Massachusetts, which is the state

I know most about, the secretary of state, although he was elected every four years, became essentially a career person. He had to do with elections, birth records, death records, and all that sort of thing, and he was elected over and over again. Governors came, governors went, and this body or that, and the same person was elected secretary of state until he decided he would retire.

So, it seems rather incongruous to have him have to run as a team with the governor. I think that there should be no limit on the number of terms for secretary of state. There should be no requirement that he ought to run as a team with the governor. I have no particular objection to a limit on the number of terms for the governor.

PRESIDENT CASSELL: So, you are for the amendment?

MR. MASON: I'm opposed to it simply for the desire to offer a better one.

PRESIDENT CASSELL: I don't know how to classify your position.

Delegate Simmons?

MS. SIMMONS: At the risk of not being facetious, but for real, I can classify delegate Mason's comment. It's belated. If delegate Mason had made it very clear that the reason we had the lieutenant governor and the governor go as

a set, that made it logical for them to be elected together. But as I indicated earlier, the secretary of state and attorney general have very particularized skills and abilities and functions that you want people to perform.

The will, ideologically, of the person is not significant because they are going to perform those functions. But, now you have said this person will perform specific functions, but in the event of death or disability of the governor, he must represent the ideology of the people who elected the governor.

So, the only way you can be sure that that is protected is that you make that person run as a mate of the governor, so that in the event of some disability to the governor, indeed the people's will will still prevail.

MS. CORN: Mr. President, I have my amendment in order now.

PRESIDENT CASSELL: Delegate Brian Moore?

MR. B. MOORE: I would like to speak against the motion because I feel similarly to what David Barnes said about the tendency or temptation for bosses and for an executive to become very powerful and influence people around the state and, in a sense, create a machine that would insure his position for many years. I concur also with Ms. Simmons'

ideas about having to work with somebody of a similar philosophy.

PRESIDENT CASSELL: Delegate Moore, are you speaking for that motion or against?

MR. B. MOORE: Against.

PRESIDENT CASSELL: Delegate Maguire?

MS. MAGUIRE: I just wanted to give some historical data that brought the committee to its conclusion, and that is that within the trend of lengthening the length of the governor's term from two to four years, 23 states have limited the number of terms.

In a recent initiative -- I think it was less than a year ago in South Carolina -- the citizens did again vote to limit the terms of the governor, and that has been seen recently in a lot of referenda both city-wide and state-wide. I could speak to it, but people obviously are not interested.

MS. CORN: Mr. President?

PRESIDENT CASSELL: All right. Now, we've had six persons speak. I'd like to move on; we've got a lot to do. Can we vote on this amendment? There has been extended discussion.

MR. JACKSON: I move the previous question, sir.

PRESIDENT CASSELL: He has moved the previous

question. There have been two for and two against. Those in favor of cutting off debate, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay. Now, the motion is to strike item (b) under Section IV. Item (b) places a two-term limit on the offices of governor and secretary of state. If you oppose that, then you will vote no. The motion is to strike that item, number (b). By striking that item, you eliminate any constriction of the terms, all right?

If you prefer to retain the limit of the terms of the secretary of state and the governor, you will vote against it. Is it clear?

MR. BRUNING: If you favor the substitute, you vote yes?

PRESIDENT CASSELL: This is an amendment, isn't it?

MR. BRUNING: Well, it's a deletion.

MS. CORN: Point of order, Mr. President.

MR. BALDWIN: It's an amendment to delete section (b), Mr. President.

PRESIDENT CASSELL: If everybody would look at item (b) under Section IV, the motion is to delete section (b). Those in favor of deleting section (b), signify by raising your hands.

MR. COOPER: One.

PRESIDENT CASSELL: Opposed?

MR. COOPER: Nineteen.

PRESIDENT CASSELL: Abstain?

MR. COOPER: Three.

PRESIDENT CASSELL: The motion to strike item (b) fails. We're back to the original motion.

Delegate Corn?

MS. CORN: I was going to make a motion before and you said you'd come come to me. Could I make it now, please?

PRESIDENT CASSELL: Yes, go ahead.

MS. CORN: I move to strike Section IV(c). The reason I'm doing this is because I do not believe -- is it supposed to be seconded before I speak?

MS. LOCKRIDGE: Yes.

PRESIDENT CASSELL: I'm sorry; I didn't ask for a second. Is there a second? Make your motion again.

MS. CORN: I move to delete Section IV(c).

PRESIDENT CASSELL: Is there a second?



(The motion was duly seconded.)

PRESIDENT CASSELL: All right. Discussion?

MS. CORN: The reason I do this is I do not believe that the governor and the secretary of state should be on the same ticket. Therefore, I move to delete section (c). This way, they will not run as a team; you will not have that kind of collusion.

PRESIDENT CASSELL: It has been moved and seconded to delete item IV(c). Discussion?

MS. CORN: May I now speak --

PRESIDENT CASSELL: You just got through speaking. Further discussion, please.

(No response.)

PRESIDENT CASSELL: There being no discussion, those in favor of deleting item IV(c), signify by raising your hands.

MR. COOPER: Four.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twenty-one.

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay, we're back to the original motion to adopt Section IV, as amended. Those in favor,

signify by raising your hands.

MR. COOPER: Twenty-six.

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

PRESIDENT CASSELL: Okay, delegate Simmons.

MS. SIMMONS: Section V will be titled "Qualifications of Governor and Secretary of State." Again, you will find in line 16, "The Governor and Secretary of State shall be at least thirty years of age when elected." On line 19, you will also find again the term "Lieutenant Governor," which should be changed to "Secretary of State."

I therefore, with those amendments, Mr. President, move the adoption of Section V.

PRESIDENT CASSELL: Is there a second?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that Section V be adopted. Discussion? Kameny?

MR. KAMENY: Mr. President --

MS. CORN: Point of order, Mr. President.

PRESIDENT CASSELL: This had better be a good one now.

MS. CORN: You had said that, as the minority report, I would be allowed the first try at each amendment that had a minority report. I have one on this section. I therefore request consideration right now.

PRESIDENT CASSELL: You have consideration, quickly now.

MS. CORN: Thank you.

MR. KAMENY: May I get the floor back in due course?

PRESIDENT CASSELL: Yes.

MR. KAMENY: Thank you.

MS. CORN: Shut up.

On line 17, I move to strike the word "five" and make it "ten."

PRESIDENT CASSELL: Please repeat that.

MR. CORN: Section V, the third line down -- that would be line 17.

MS. SIMMONS: In your minority report, you said seven years.

MS. CORN: Seven; I'm sorry -- seven years. I move to strike the word "five" years and replace it with the word "seven." So, it will read, "The Governor and Secretary of State shall be at least thirty years of age when elected, shall be citizens of the United States, and shall have resided

in the state of \_\_\_\_\_ for at least seven years before the day of assumption of office."

PRESIDENT CASSELL: Is there a second to the motion?

(No response.)

PRESIDENT CASSELL: The motion dies for the lack of a second. Delegate Simmons?

MS. SIMMONS: Kameny?

PRESIDENT CASSELL: Delegate Kameny?

MR. KAMENY: Yes. Mr. President, I'd like to suggest that I believe it's more consistent with usual practice with respect to age that the age shall apply to the date that the office-holder takes office rather than when elected.

MS. SIMMONS: When he assumes office?

MR. KAMENY: Yes; "shall be thirty years of age when he or she takes office."

MS. SIMMONS: Upon assumption of office?

MR. KAMENY: Upon assumption of office.

PRESIDENT CASSELL: Would you accept that without the process of an amendment?

MS. SIMMONS: Yes.

MR. KAMENY: Thank you.

MS. SIMMONS: As a matter of fact, President Cassell,

we went through this and tried to take out as many polysyllabic terms as possible because we wanted it to be a cogent and very simplistic document. But "upon assumption of office" is what the original language was.

MS. CORN: Excuse me. Point of order, Mr. President. There is a substantive difference between those two.

PRESIDENT CASSELL: That is not a point of order.

Is there further discussion of the motion, as amended?

(No response.)

PRESIDENT CASSELL: There being none, those in favor of the motion, as amended, signify by raising your hands.

MR. KAMENY: This is Section V?

MS. SIMMONS: Section V, adopted as amended.

MR. COOPER: Twenty.

PRESIDENT CASSELL: Opposed?

MR. COOPER: Two.

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

PRESIDENT CASSELL: The motion carries.

Delegate Simmons, Section VI.

MS. SIMMONS: Section VI, "Powers of the Governor";  
(a) Administration; (b) Commander-In-Chief, with the deletion

of "and repel invasion"; (c), with the deletion of "except treason"; (d) Legislative Powers; (e) Judicial Powers. This is Section VI, "Powers of the Governor."

MS. CORN: I beg your pardon.

PRESIDENT CASSELL: You haven't been recognized.

MS. SIMMONS: Section VI, "Powers of the Governor"; (a) Administration; (b) Commander-In-Chief, with the deletion of "and repel invasion" on line 9; (c) Executive Clemency, and delete "except treason" because we established only one instance, and that was John Brown.

MS. HARRIS: That was then corrected.

MS. SIMMONS: Pardon?

MS. HARRIS: Well, he said it was incorrect. John Brown had treason against the federal government.

MS. SIMMONS: It was federal, okay. Then there was no exception, all right?

(d) Legislative Powers; (e) Judicial Powers. I move the adoption of Section VI, Mr. President, as amended.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that Section VI be adopted, with the amendments that have just been agreed to by common consent.

Delegate Corn?

MS. CORN: Now, shall I give my minority report subsection by subsection or all of it now? I would move to divide it paragraph by paragraph.

MS. SIMMONS: Yes, we can do that.

PRESIDENT CASSELL: Yes.

MS. SIMMONS: That will simplify it. Don't tell us what you're going to do and then tell us too many times. You're not until section (b), are you?

MS. CORN: No.

MS. SIMMONS: You've got an (a)?

MS. CORN: Yes.

MS. SIMMONS: All right.

MS. CORN: I move to delete the language on lines 23 and 24, "with the advice and consent of the legislature." The reason I'm moving this amendment is, since we are trying to make the governor all-powerful and therefore completely accountable, let us make sure that we do make him completely accountable, so that later on he cannot blame the legislature.

MS. SIMMONS: You have to read your amendment first and what you're changing. All you did was tell what you're going to eliminate and you didn't say what you're going to add.

PRESIDENT CASSELL: One at a time; one at a time.

MS. CORN: My amendment in (a) would be to delete the words "with the advice and consent" --

MS. SIMMONS: You already said that.

MS. CORN: I've been told three different sets of directions from you and the President.

PRESIDENT CASSELL: Please proceed to read your amendment to VI(a).

MS. CORN: My amendment in VI(a) is to delete the words "with the advice and consent of the legislature." The sentence shall now read, "(a) Administration: The Governor shall have the power to control those aspects of administration for which the Executive is held responsible. The Governor shall appoint the heads of all principal departments. All other heads of administrative," et cetera.

The reason I am doing that is --

MS. MASON: Point of order.

MR. BALDWIN: I didn't hear a second.

MS. MASON: The mover should get a second before we discuss it.

PRESIDENT CASSELL: Yes.

MS. CORN: Sir, if you would allow me an explanation --

PRESIDENT CASSELL: You have to get your second



first. You move your motion, you get a second, and then you explain.

Is there a second to that motion?

(No response.)

PRESIDENT CASSELL: The motion dies for the lack of a second.

Section VI(b)?

MR. SCHRAG: Are other amendments to VI(a) in order, or do we go through the entire --

PRESIDENT CASSELL: This is a minority report which was submitted with the majority report. We are obligated to finish that.

MR. SCHRAG: So, we'll go back to VI(a)?

PRESIDENT CASSELL: I'm afraid we'll have to.

MS. CORN: In (b), at the end of line 9, I would add the words "or in the case of a national emergency." So, (b) will now read, "The Governor shall be commander-in-chief of the armed forces of the state, and may call out such forces to execute the laws or in the case of a national emergency."

For instance, if we had the place burning down, like in 1968, or when there's a flood or something like that --

PRESIDENT CASSELL: Is there a second to that motion? You have to remember, delegate Corn, to make the motion, get a

second, and if there's no second, then there's no need to go on.

(The motion was duly seconded.)

MS. CORN: There was just a second, sir.

PRESIDENT CASSELL: Okay. Discussion?

MS. CORN: Now, may I speak to my motion?

PRESIDENT CASSELL: Discussion?

MS. CORN: Yes. May I speak to my motion?

PRESIDENT CASSELL: Yes, go ahead.

MS. CORN: The reason I say this is, for instance, in every state the governor is allowed to call out the troops for national emergencies. In states with big forests, if the forests burned down, they can call out the national guard. If they are a state along the Atlantic or Pacific Ocean and they have a lot of flooding or something like that and people need to be rescued, or in the situation where --

MS. SIMMONS: Well, we understand, but what --

MS. CORN: I'm talking.

PRESIDENT CASSELL: Delegate Corn, let the President interrupt you and ask you a simple question. A national emergency is called by the President, not by the governor.

MS. CORN: Well, what kinds of emergencies does the governor call out the national guard for, local

—  
emergencies?

PRESIDENT CASSELL: This is not the question I asked. Your point is well taken and you can make your motion. I simply indicated that it's not in order, all right? Do you have an amendment for another section?

MS. CORN: In section (b), I would make it "or in the case of a state emergency."

MS. SIMMONS: Are you changing your amendment?

MS. CORN: This is under (b): "The Governor shall be commander-in-chief of the armed forces of the state, and may call out such forces to execute the laws or in the case of a state emergency."

(The motion was duly seconded.)

PRESIDENT CASSELL: Well, that is out of order, of course, because the minority report must be submitted with the majority report.

MS. CORN: It was.

PRESIDENT CASSELL: You are changing it.

MS. CORN: I'm changing it from "national" to "state."

PRESIDENT CASSELL: You can't do that. Do you have any other amendments?

MS. CORN: Yes.

PRESIDENT CASSELL: Please proceed.

MS. CORN: In (c) I would delete the words, in line 11, "and may delegate such powers." Now, it'll read: "(c) Executive Clemency: The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such procedures as may be prescribed by law."

PRESIDENT CASSELL: Is there a second to that motion?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that item (c), on line 11 -- that "and may delegate such powers" be deleted. Discussion?

MR. LOVE: Mr. Chairman?

PRESIDENT CASSELL: Love?

MR. LOVE: I have a question. Does that mean that a parole board could not operate?

MS. CORN: No.

MR. LOVE: I'm asking the committee here. A parole board often decides about things like that.

MS. SIMMONS: That's right; clemency, probation, and so forth.

MR. LOVE: Well, if you delete --

MS. SIMMONS: You know, the governor always has the

right -- may I answer this question?

PRESIDENT CASSELL: Yes, yes.

MS. SIMMONS: The governor has the right to delegate authority and to appoint duties and responsibilities to boards and commissions, which are spoken to later on. So, the answer is yes, simplistically.

PRESIDENT CASSELL: All right. Does that mean that there being no parole board indicated in the constitution, such must be executed by the legislature? That appointment would be made by the governor?

MS. SIMMONS: And approved by the legislature.

PRESIDENT CASSELL: Yes.

MS. CORN: Mr. President, could I speak to my motion, please?

MS. SIMMONS: It hasn't been seconded.

PRESIDENT CASSELL: Yes, it was seconded.

MS. CORN: It was seconded by Mr. Mason.

PRESIDENT CASSELL: Please speak to your motion.

MS. CORN: The reason I suggested deletion -- delegate Love, since you're asking, if you'll give me the courtesy of hearing me out, this has nothing to do with the parole board. Since the governor is the one who can grant reprieves and pardons, this simply means that he can't say to

the secretary of state or to the attorney general or to anybody else, "Well, I'll give you this authority to do it," or the state legislature.

This means only the governor or whoever occupies the governor's office -- if the governor drops dead and the secretary of state takes his or her place, then it would be the secretary of state, acting in the position of governor. But nobody else would have this right or authority.

PRESIDENT CASSELL: Discussion? Delegate Kameny?

MR. KAMENY: Yes. I rise to support the motion. The pardon power particularly has tended to be very much an individual one of the chief executive. At the federal level, it's the President who pardons you if you get pardoned, and not somebody else to whom he may have delegated those powers.

I think in this case, we might be advised to leave it the same way and leave those powers over people convicted in various ways and in various dispositions of the kind specified here, with the chief executive alone and individually. So, I would move to support delegate Corn's amendment to delete the words at the end of this section.

PRESIDENT CASSELL: Delegate Clark? Delegate Clark has the floor and I'm going to ask everyone else to be quiet.

MR. CLARK: My inclination, Mr. President, is to

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vote for this motion because it is normally the power of the executive; maybe with the recommendation of a body, but solely the power of the executive to make these determinations of pardons, reprieves and commutations, which are not just limited to parole.

I would inquire, however, as to the rationale of the committee. If it is the committee's feeling that most executive functions are delegated and therefore this one should be, I would think that they were wrong, in that in most cases the pardon power is not delegated.

If there was some extraordinary policy reason for which they determined that our state should operate differently than most other states, I would like to hear that.

PRESIDENT CASSELL: One moment now.

(Pause.)

MS. SIMMONS: May I respond?

PRESIDENT CASSELL: Yes.

MS. SIMMONS: It is in view of responsible legal and penalogical authority that in addition to legal and political considerations, the granting of pardons involves complex judgments of a correctional and behavioral nature. And the chief executives are neither trained to exercise such judgment, nor can they expect to have any special interest in

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—  
doing so.

Hence, this model expresses the view that a state constitution should leave the matter to legislative development. While recognizing clemency powers to be executive in nature, the section permits the governor to delegate them "subject to such procedures as may be prescribed by law," which you find in our language. This will leave room for the creation of such expert or professional boards or agencies to deal with the matter of clemency as may be appropriate.

MR. CLARK: A further question.

PRESIDENT CASSELL: Yes?

MR. CLARK: Is the motion to eliminate just "may delegate such powers," or "may delegate such powers subject to such procedures as may be prescribed by law?"

MS. CORN: The motion is simply to delete the words "and may delegate such powers."

MR. CLARK: Was part of the response to my original question that the words "subject to such procedures as may be prescribed by law" modified the delegation?

MS. SIMMONS: That's correct, absolutely.

MS. CORN: May I answer?

MS. SIMMONS: He asked me, and I'm saying yes to the question he addressed to me.



MS. CORN: What was the question?

PRESIDENT CASSELL: Delegate Corn, you're just going to have to stop disrupting.

MS. CORN: I cannot hear, Mr. President.

PRESIDENT CASSELL: I'm sorry. There is a conversation now between two individuals who have been duly recognized. Now, let them carry on their conversation. Everybody has questions such as yours, but there's a way to get those questions in. Some of your questions are probably not going to be answered, and that's something you have to accept, too.

Have you gotten an answer to your question?

MR. CLARK: Well, I'm wondering if we're not in a perplexing situation because if the words "subject to such procedures as may be prescribed by law" were intended to modify the delegation and not the execution of the reprieve, then maybe we need to have an amendment to the motion.

MS. SIMMONS: The question of delegate Clark is that what delegate Corn hopes to achieve is not achievable in the words that you have deleted; that that belongs together, and you may want to modify that further.

MS. CORN: May I do so now, Mr. President?

PRESIDENT CASSELL: Yes, you may.

MS. CORN: All right. Then I would change number (c) to read, "The Governor shall have such power, subject to such procedures as may be prescribed by law, to grant reprieves, commutations and pardons, after conviction, for all offenses."

PRESIDENT CASSELL: Delegate Simmons, that doesn't seem to correct it; that doesn't seem to correct it

MS. CORN: Mr. President, we could put the clause at the beginning: "Subject to such procedures as may be prescribed by law, the Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses."

MS. SIMMONS: No, no. She's talking about grammar and we're talking about substance.

PRESIDENT CASSELL: Yes.

MS. CORN: Well, I'm missing your point, then.

MS. SIMMONS: We're saying that "subject to such procedures as may be prescribed by law" is the condition prevailing in the delegation of the powers. When you eliminate the delegation of the powers and leave "subject to such procedures as prescribed by law," it becomes unnecessary, illogical and unimportant.

PRESIDENT CASSELL: Could I suggest, delegate Corn, that what you really want to accomplish is simply to delete

— everything from "and may delegate such powers," on. The phrase "subject to such procedures as may be prescribed by law" really does modify what you want to delegate.

MR. KAMENY: May I rise to a question, please?

PRESIDENT CASSELL: Yes.

MR. KAMENY: Is it then the intention of the committee that the governor's power to grant reprieves, commutations and pardons after conviction is, in fact, not subject to such procedures as provided by law, and he is free to do it any old way he wants to?

MS. SIMMONS: No. We do want it. We wrote it precisely as we wanted it. We could simplify this by quickly getting to the question, defeating this amendment, and moving on.

MR. COATES: Move the question.

MS. SHELTON: I would like to rise in support of the committee's position. I think it has already been articulated some by the reading from that excerpt, but I do think it is important for us to understand that the District of Columbia deserves a system unlike any other system that we have described.

— I do have some concern about this concept of the justice system that we have now in operation has somehow or

another proven to be good for the District's population. I think that the concept here is that this can be delegated to, by the governor, some group of experts who will assist him in making a decision.

This system has not been in operation in the past, and we have seen that those who have been granted gubernatorial pardons have come from a certain economic and political group. So, I rise in support of the committee's position.

MS. CORN: Mr. President, I think that my point --

PRESIDENT CASSELL: Delegate Mason?

MR. MASON: If delegate Corn had not offered this amendment, I would have offered a similar one, although I would have stricken the whole rest of the sentence.

PRESIDENT CASSELL: All right. Let's deal with the question.

MR. MASON: But I rise to point out that there's absolutely nothing here that prevents the use of all kinds of experts and committees, and so forth, to advise the governor. But the final signature has to be the governor's, and I'm sure that in spite of what was read from the model constitution or whatever it was, practically every state, if not every one, requires that the final action be taken by the governor. There may be commissions, and so forth, to recommend --

PRESIDENT CASSELL: Let the President ask a question. If the governor shall have certain powers and may delegate such powers, does that mean that someone else can exercise that power, including the signing?

MS. SIMMONS: No. No one else can sign it.

MS. CORN: That's the way it is written here. That's what "delegate" means. Mr. President, may I --

PRESIDENT CASSELL: Would you please wait?

MS. SIMMONS: I think that what delegate Mason is saying is, while that may be true, you've got to look at the other side of that too, and that is, as it stands now, this says, "The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses." It does not suggest any kind of constraints, any kind of direction, any kind of obligation of responsibility in his decision-making. It really leaves him a free moral agent to engage in whim, if you please.

I think that same population that delegate Shelton was talking about has been a victim of precisely that kind of previous, ultimate power vested in one person without any guidance.

PRESIDENT CASSELL: Delegate Barnes, delegate Baldwin, and then I'd like to vote.

MR. BARNES: I'd like to move the previous question.

PRESIDENT CASSELL: The previous question has been moved. Those in favor of cutting off debate, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(There was one "nay.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay. The motion on the floor refers to item number (c) in Section VI, line 11, to delete "and may delegate such powers." Those in favor of that motion, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(One hand was raised.)

PRESIDENT CASSELL: The motion loses.

Delegate Simmons?

MR. LOVE: Mr. Chairman, I have an amendment to (c).

MR. JORDAN: Point of order, Mr. Chair.

PRESIDENT CASSELL: Point of order, delegate? State

— your point of order.

MS. SIMMONS: That concludes your minority report?

MS. CORN: Yes.

PRESIDENT CASSELL: Delegate Jordan has a point of order.

MR. JORDAN: Yes, Mr. Chair. As I understood your directive earlier, the submitter of the minority report would go through each section and make all of her proposed amendments and substitutions, and then we'd come back to others.

MS. SIMMONS: Correct, so we're back to (a). We have completed the minority report.

MR. JORDAN: Have we completed your minority report?

MS. CORN: We've completed the minority report for Section VI.

PRESIDENT CASSELL: Very well. The minority report having been completed, we go back to item number (a), Section VI.

MS. SIMMONS: "Administration."

PRESIDENT CASSELL: Now, would you like to move the adoption of that, delegate Simmons?

MS. SIMMONS: I moved it before the minority report.

PRESIDENT CASSELL: Okay.

MS. SIMMONS: Now, we have other amendments.

PRESIDENT CASSELL: Other amendments? Delegate Schrag, delegate Long.

MR. SCHRAG: Mr. President, I move, on line 23, to insert a couple of words so that the line would read, "The Governor shall appoint an attorney general and the heads of all other principal departments ..."

(The motion was duly seconded.)

MR. SCHRAG: The purpose of this amendment, Mr. President, is because I noticed in several of the other committee drafts, we do give the attorney general responsibilities with respect to suffrage and the like. There are places in this constitution where the attorney general is going to be mentioned, and we certainly need an attorney general in the transition section to pick up the duties of the present corporation counsel and of the U.S. attorney.

Therefore, we ought to establish one. Since we've decided not to establish one by election, we should establish one in this section where the governor appoints.

PRESIDENT CASSELL: Discussion? Kameny, Long.

MR. KAMENY: I'd like to know if Mr. Schrag intends at some other point to propose some specific duties for that



attorney general.

MR. SCHRAG: Mr. President, in response to delegate Kameny, I would be prepared, when we complete the articles proposed -- Mr. President and delegate Simmons, I will be prepared, if this amendment is adopted, when we finish the articles to offer a one or two-sentence section defining the duties of the attorney general, in line with the language that delegate Simmons read earlier describing those duties generally.

MS. SIMMONS: Prosecutorial?

MS. SCHRAG: Yes. Thank you.

PRESIDENT CASSELL: Delegate Long?

MR. LONG: I wish to be recognized at the proper time for another matter in section (a).

PRESIDENT CASSELL: Okay. Delegate Shelton?

MS. SHELTON: I rise in opposition to this amendment. I think it's already spelled out that an attorney general is usually considered as being delegated as a head of a department as all other heads of departments, and I don't think it should be spelled out in the constitution.

PRESIDENT CASSELL: Delegate Love?

MR. LOVE: Mr. Chair, there are certain other committees -- for example, Initiative and Referendum -- that

— talk about having the attorney general do something. Now, we could either establish the attorney general there or we could establish him here. It seems to me that this is as good a place as any, and I'd like to move the question.

PRESIDENT CASSELL: There haven't been two for and two against yet. Delegate Clark?

MR. CLARK: I would like to amend delegate Schrag's amendment. He says, "The Governor shall appoint an attorney general." I would like to insert there "who shall serve for a term of four years."

MS. SIMMONS: Six.

MR. CLARK: No; I'm moving four. The point that I'm going to get to is that later I'm going to also move that his removal can only be by action of the senate, or by action of the legislature.

The reason for this is that the attorney general must have some independence from the executive if the attorney general is to prosecute any corruption that may occur within the executive branch. If the attorney general is to serve solely at the pleasure of the executive, there will be no local capability to prosecute corruption in the executive branch.

— MR. BARNES: Point of order.

PRESIDENT CASSELL: Delegate Barnes?

MR. BARNES: That motion is out of order because it's reconsideration of something we've already passed. We said that the attorney general was to be appointed.

PRESIDENT CASSELL: He's stating what he intends to do later on, but he's still out of order.

MR. CLARK: I'm not out of order, Mr. Chairman. I'm moving an amendment to the amendment.

PRESIDENT CASSELL: I didn't hear you move an amendment to the amendment.

MR. CLARK: The amendment on the floor that Mr. Schrag offered is that the governor shall appoint an attorney general; he seeks to insert those words. I wish to amend his amendment to say "for a period of four years," so it would say, "The Governor shall appoint an attorney general who shall serve for a term of four years."

PRESIDENT CASSELL: Okay. Is there a second to that amendment to the original amendment?

(The motion was duly seconded.)

PRESIDENT CASSELL: Okay. It has been moved that the amended motion be amended further so that it shall read this way: "The Governor shall appoint an attorney general for a period of four years, and the heads of all principal

— departments ..."

MR. CLARK: "Who shall serve for a term of four years."

MS. SIMMONS: It's for a term of four years.

PRESIDENT CASSELL: "Who shall serve for a period of four years, and the heads of all principal departments ..."  
Discussion?

MS. CORN: Point of information.

PRESIDENT CASSELL: Point of information?

MS. CORN: I'd like to ask delegate Clark something.  
I just want to ask, supposing the governor appoints an attorney general for a four-year term; the governor has just started his four-year term. One year later, this new attorney general dies. Does the governor then appoint a second attorney general for another full four-year term? In this wording, that's what it means, does it not?

MR. CLARK: My intent would be that the term of the attorney general would be with the term of the governorship.

MS. CORN: Would you accept a friendly amendment, Mr. Clark?

MS. SIMMONS: Mr. President, the point of information that's raised is provided for because if he dies, it becomes

a vacancy, and we have provided for vacancies and how they shall be filled. I don't think you should just act oblivious to page 6.

PRESIDENT CASSELL: I think you've responded to that question. Is there further discussion on delegate Clark's amended motion? Yes, delegate Shelton?

MS. SHELTON: Again, I'd like to rise in opposition to the delegate's motion. First, it's because I believe the people who vote have the power to deal with corruption. There are certain specifications in our amendment that talk about certain malfeasance in office.

I do oppose the concept that the justice system is beyond and above reproach, and I think he's putting forward this concept and placing the attorney general and the justice system above all other departments, and I do not think it should be given that position.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: Yes. I just wanted to say that the committee has given some very careful thought to the amendment to the amendment, and that is that the very example that you point to happens not to be true in the District of Columbia. The Board of Education had to use the corporation counsel, which is appointed by the Mayor, and we won against the Mayor

with his own corporate counsel.

So, to suggest that people, because they are appointed, therefore have no judicial prudence and no personal integrity, is something I'm not sure I want us to imply in this constitutional document.

MR. CLARK: Point of personal privilege.

PRESIDENT CASSELL: State your point of personal privilege.

MR. CLARK: I have indicated that nobody lacked personal integrity, and I certainly, in response to delegate Shelton, have not indicated that the justice system is beyond reproach. I have indicated that it might be very well within reproach, and that is the reason why we need some independence.

PRESIDENT CASSELL: Delegate Harris?

MS. HARRIS: Move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that we cut off debate.

MS. CORN: Point of information, please.

PRESIDENT CASSELL: Those in favor, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay. The motion on the floor is to amend so that line 23 reads, "The Governor shall appoint an attorney general for a term of four years, and the heads of all principal departments," et cetera, et cetera. Those in favor of that, signify by raising your hands.

MR. COOPER: Thirteen.

PRESIDENT CASSELL: All right, 13. Those opposed?

MR. COOPER: Fifteen.

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion loses.

MS. CORN: Point of information, Mr. President.

PRESIDENT CASSELL: We're now back to delegate Schrag's motion, which says, "The Governor shall appoint an attorney general and the heads of all principal departments ..."

MR. SCHRAG: "All other principal departments

PRESIDENT CASSELL: "And the heads of all other principal departments." Once more, Schrag's motion is to amend line 23 to read, "The Governor shall appoint an attorney

— general and the heads of all other principal departments ..."

Those in favor of that motion, signify by raising your hands.

MR. COOPER: Twenty-one.

PRESIDENT CASSELL: Opposed?

MR. COOPER: Five.

PRESIDENT CASSELL: Abstain?

MR. COOPER: One.

PRESIDENT CASSELL: What's the vote?

MR. COOPER: Twenty-one in favor, five against, one abstain.

PRESIDENT CASSELL: Okay, the motion carries. We are now back to the original motion, with the amendment, on item number (a) under Section VI. Those in favor --

MR. SCHRAG: Mr. President, Mr. Long was going to ask a question, I believe.

PRESIDENT CASSELL: Mr. Long?

MR. LONG: I was to be recognized on another matter.

PRESIDENT CASSELL: Yes.

MR. LONG: Page 3, line 6, "The Governor may remove any official appointed by the Executive." After the disagreement we had over the judiciary, I wanted to ask whether we ought to say something here about excepting judges, or what



— was the intent of the committee here?

MS. SIMMONS: The judges aren't appointed; they're elected.

MR. LONG: They are appointed to begin with, remember?

MS. SIMMONS: That's right.

MR. LONG: Up until the confirmation election, up to three years. Should we say, "except judges?"

MS. SIMMONS: I don't know. Under "Administration," what we've said here has referred to all heads of administrative offices and agencies established by the constitution.

MR. KAMENY: The executive branch will take over.

MR. LONG: Kameny's suggestion is perhaps a good one.

MS. SIMMONS: Well, I'm just seeing if the judiciary, by virtue of our language, doesn't exclude itself from this point.

MR. LONG: It may have to.

MS. SIMMONS: "The Governor may at any time require information ... office or agency." I do not see language that would suggest that the judiciary is included. Now, for absolute assurance, I certainly have no objection to saying

—

— that the governor may remove any official appointed by the executive, with the exception of the judiciary.

PRESIDENT CASSELL: Can we do that by common consent?

MR. BALDWIN: Yes.

MS. CORN: Point of order.

MR. KAMENY: Leaving the judicial branch aside, does the governor appoint anybody in the legislative branch?

PRESIDENT CASSELL: No.

MR. KAMENY: Then say, "may remove any executive branch official appointed by him or her."

MS. CORN: "Or any appointed department head."

MS. SIMMONS: We said "any appointed department head." That's what we've included here. We've said, principal department heads of administrative offices and agencies. I think that's very clear.

PRESIDENT CASSELL: Is it correct to say that the governor does not appoint anybody in the legislative branch?

MS. SIMMONS: That's correct.

MR. KAMENY: So, all these people are in the executive branch, and we should say that.

MS. CORN: "The Governor may remove any executive branch official appointed by the executive."

MR. JORDAN: Is there a motion on the floor?

PRESIDENT CASSELL: The motion on the floor is to adopt Section VI, as amended.

Delegate Rothschild?

MR. ROTHSCCHILD: I'm sorry; maybe I missed part of this. "The Governor may remove any official appointed by the Executive." Do we have "except for the attorney general?" Is that clear?

MS. SIMMONS: Except for the judiciary.

PRESIDENT CASSELL: Except for the judges.

MR. ROTHSCCHILD: How about the attorney general? I thought we wanted to make that clear.

MS. SIMMONS: No. He appoints the attorney general, and the attorney general can be removed, but judges cannot be removed.

MR. ROTHSCCHILD: But I thought delegate Clark spoke earlier to the fact that he didn't want the attorney general to be removable by the governor.

MR. KAMENY: It lost.

PRESIDENT CASSELL: Well, that's the motion that we have; either vote it up or vote it down. Let's vote on that motion now. This is Section VI(a); it has been amended to read, "The Governor shall appoint an attorney general and the

heads of all other principal departments," et cetera, et cetera. Those in favor of that amendment, please --

MR. ROTHSCHILD: Point of information. Didn't we vote up delegate Clark's --

MR. KAMENY: No.

MS. SIMMONS: We voted it down.

MR. SCHRAG: Mr. President, has the last line been changed to say something about judges or the executive branch?

MS. SIMMONS: Yes.

MR. SCHRAG: What's the wording?

MS. SIMMONS: "The Governor may remove any official appointed by the Executive, except judges." Style and Drafting will take care of making that more semantically correct.

PRESIDENT CASSELL: All right. We're talking about line 6 now: "The Governor may remove any official appointed by the Executive, except judges." Is that correct, delegate Simmons?

MS. SIMMONS: Yes, that's correct.

PRESIDENT CASSELL: Okay. Those in favor --

MR. THOMAS: May I just insert something?

PRESIDENT CASSELL: Yes.

MR. THOMAS: If you just say "except judges," what

— about an appointment to the Senate?

MS. SIMMONS: The governor appoints a Senator in the case of a vacancy.

MR. THOMAS: Right.

MS. SIMMONS: He therefore has the right to remove him, too.

MR. THOMAS: I would submit that for your consideration before you vote.

PRESIDENT CASSELL: Delegate Clark?

MR. CLARK: Would not better language be that the governor may remove any executive official in the executive branch?

MS. SIMMONS: Yes; "of the executive branch." That was our intent.

PRESIDENT CASSELL: That would clarify that, as was suggested earlier. May we make that substitution without objection from the committee?

MS. SIMMONS: Right, right.

PRESIDENT CASSELL: "The Governor may remove any executive position" --

MS. SIMMONS: "Any official of the executive branch."

MR. ROTHSCILD: Point of information. Does that include secretary of state?

—

MS. SIMMONS: You just elected the secretary of state.

MR. SCHRAG: He is appointed by the executive.

MS. SIMMONS: The secretary of state is not appointed; you just elected him.

PRESIDENT CASSELL: Please, please. The amendment now reads, and we have yet to vote on it, "The Governor may remove any official of the executive branch."

MS. SIMMONS: Right.

MR. SCHRAG: "Appointed by the Executive."

MS. SIMMONS: Right.

MS. CORN: Point of information, Mr. President.

PRESIDENT CASSELL: "Appointed by the Executive."  
Is that correct now?

MS. SIMMONS: Right.

PRESIDENT CASSELL: Okay. Point of information?

MS. CORN: Point of information, Mr. President.  
Does this mean with this wording that if the secretary of state appoints, let's say, an advisor to himself or somebody to work under him, that the governor may remove him?

MS. SIMMONS: The secretary of state doesn't have appointive power.

PRESIDENT CASSELL: Are you ready for the question?

Delegate Kameny?

MS. CORN: The secretary of state can appoint his own staff, can't he?

MR. KAMENY: When we make changes on the floor, things have ramifications. I'm troubled by one other ramification here that I'd like to inquire about, if I may, just quickly.

PRESIDENT CASSELL: Yes, sir.

MR. KAMENY: It's my understanding that at least pro forma, any civil service employee at any level at all, even a clerk, is nominally an appointee of the chief executive.

MS. SIMMONS: Nominally.

MR. KAMENY: Therefore, might you not want to put in some sort of phrase such as, "as provided by law," so that the civil service protections remain? Otherwise, it allows arbitrary removal of all civil service employees, which I don't think is what we have in mind here.

MS. CORN: Second.

MS. SIMMONS: Mr. President, there is a civil division that handles the merit personnel aspects. Those are administrative, legislated positions.

MR. KAMENY: Yes.

MS. SIMMONS: No one assumes that a secretary or a clerk, while indeed they are employees of the state -- that is, technically, employees appointed by the -- we know that on that piece of paper, we are not talking about them.

MR. KAMENY: I know you don't want that, but I'm concerned that the constitution may end up saying it.

PRESIDENT CASSELL: I think that the explanation there is rather clear. The merit system does exclude the arbitrary firing by the executive of people who are in civil service.

MS. SIMMONS: Yes; the civil division takes care of that.

PRESIDENT CASSELL: Delegate Schrag?

MR. SCHRAG: Perhaps delegate Simmons could accept adding to the end of the sentence, "with the consent of the legislature, and that would make it clear that it was only the --

MS. SIMMONS: That's redundant.

MR. SCHRAG: No, not "removed with the consent of the legislature." This defines the people who are affected by this removal power, so that the clerk and the typist who are not officials who are confirmed can't be removed. But it's the political officials, the ones who are confirmed by



the legislature, who could be removed.

MS. SIMMONS: But I never found that in a single document, and we read all 56 of them, delegate Schrag.

MS. CORN: There are only 50 of them.

MS. SIMMONS: No, because there are territories, my friend. You didn't read any, so you don't know how many there are.

PRESIDENT CASSELL: The question has been answered, I believe. It is time now for us to vote.

MR. ROTHSCHILD: Point of information. If the secretary of state dies in office and the governor appoints a new secretary of state, can the governor then remove that secretary of state that he has appointed?

If the secretary of state dies in office and the governor appoints a secretary of state, is he then allowed to remove that secretary of state because he appointed him?

PRESIDENT CASSELL: Of course.

MS. SIMMONS: Right.

PRESIDENT CASSELL: Those in favor of the amended motion, which now has that the governor may remove any official of the executive branch appointed by the executive, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(There was one "nay.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Any further amendments?

(No response.)

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: I move the adoption of section (b), "Commander-in-Chief," the sentence being, "The Governor shall be commander-in-chief of the armed forces of the state, and may call out such forces to execute the laws."

PRESIDENT CASSELL: Is there a second?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded, as read, that item (b) be adopted. Discussion?

MS. CORN: Discussion.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: I would move the amendment that "or in the case of a state emergency" be added at the end of line 9.

PRESIDENT CASSELL: Is there a second?

(No response.)

PRESIDENT CASSELL: The motion dies for the lack of a second.

MR. ROTHSCHILD: Second.

PRESIDENT CASSELL: Too late, too late.

Those in favor of the motion to adopt number (b) as read, signify by raising your hands, please.

MR. COOPER: Twenty.

PRESIDENT CASSELL: Opposed?

MR. COOPER: Four.

PRESIDENT CASSELL: Abstain?

MR. COOPER: One.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: IV(c) Executive Clemency: "The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses." Was your amendment approved?

MS. CORN: No. You twisted it to the point that it--

MS. SIMMONS: "... for all offenses, and may delegate such powers, subject to such procedures as may be prescribed by law."

PRESIDENT CASSELL: Is there a second?

(The motion was duly seconded.)

PRESIDENT CASSELL: It is moved and seconded that we adopt item (c), as amended. Discussion?

MR. LOVE: Mr. Chair, I'd like to move an amendment

to read, "A parole system shall be provided by law."

MS. SIMMONS: "A parole system" --

MR. LOVE: "A parole system shall be provided by law," just to be sure we have one.

(The motion was duly seconded.)

MR. LOVE: This is directly out of the Alaska constitution, and it also has it in the same place.

PRESIDENT CASSELL: "A parole system shall be provided by law." The amendment is to add that as an additional sentence.

MS. SIMMONS: No problem.

PRESIDENT CASSELL: It has been moved and seconded. Discussion? Delegate Clark?

MR. CLARK: Mr. Chairman, I don't know if I'm going to vote for this, but I would point out to the delegates that some states have adopted systems of sentencing that do not allow for parole. They have determined a sentencing scheme which is essentially adopted by the legislature.

I myself am very much for a parole system. However, I don't know that we want to lock the state into it constitutionally.

PRESIDENT CASSELL: Further discussion?

(No response.)

PRESIDENT CASSELL: Those in favor of the motion, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(There were two "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: The motion carries. Delegate Simmons?

MS. SIMMONS: Section (c), Legislative Powers --

MS. CORN: Point of order, Mr. President. While we just voted on the amendment, we did not vote on that section.

MS. SIMMONS: I'm sorry.

PRESIDENT CASSELL: Thank you, a correct point of order.

Those in favor of item (c), Executive Clemency --

MS. SIMMONS: With the amendment.

PRESIDENT CASSELL: -- with the amendment, which strikes "except treason," signify by raising your hands.

MR. CLARK: Would you read it?

PRESIDENT CASSELL: Yes. It now says, "Executive Clemency: The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses,

and may delegate such powers subject to such procedures as may be prescribed by law."

MS. SIMMONS: "A parole system shall be provided by law."

PRESIDENT CASSELL: "A parole system shall be provided by law."

MS. SIMMONS: That's the whole thing.

PRESIDENT CASSELL: Those in favor, signify by raising your hands.

MR. COOPER: Twenty.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: One.

PRESIDENT CASSELL: Abstain?

MR. COOPER: One.

PRESIDENT CASSELL: The motion carries. Delegate Simmons, item (d)?

MS. SIMMONS: Item (d), Section VI, "Legislative Powers: "The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which the session is convened. When so convened, the Legislature shall have no power to legislate on any subjects other than those specified in the proclamation, except to provide for the expenses of the session and other matters incidental

thereto. The Governor may convene the Legislature at some other place when the seat of government becomes dangerous from any cause. The Governor shall communicate by message to the Legislature at the beginning of each session and may at other times present to the Legislature information as to the affairs of the state, and submit legislative recommendations when deemed appropriate."

Explanation has previously been engaged in that makes it very clear that this is compatible with the legislative session, which also provides for the special convening of sessions, and it does not obviate the prerogative of the legislature to amend by their own rules items for consideration while in session.

PRESIDENT CASSELL: Do you move to adopt?

MS. SIMMONS: I move to adopt (d) of Section VI.

PRESIDENT CASSELL: Second?

(The motion was duly seconded.)

PRESIDENT CASSELL: Any discussion? Kameny, Bruning.

MR. KAMENY: I have one question. One should avoid open-ended directives in constitutions. At the very end you say, "and submit legislative recommendations when deemed appropriate." Who is supposed to be doing the deeming, the

— governor, the legislature, or both, jointly or separately?  
I think you mean deemed appropriate by the governor himself.

MS. SIMMONS: By the governor.

MR. KAMENY: In that case, you should say so and  
close the open end.

MR. LOVE: Why not just get rid of "when deemed  
appropriate?"

MS. SIMMONS: Okay. " ... legislative recommenda-  
tions," period, would handle the matter beautifully, and I  
thank you for your suggestion.

MR. KAMENY: Fine.

PRESIDENT CASSELL: Common consent, without objec-  
tion?

MS. SIMMONS: No substance.

PRESIDENT CASSELL: Very good. Further discussion?  
Bruning?

MR. BRUNING: No.

PRESIDENT CASSELL: Are you ready for the vote?  
Those in favor of this motion, as amended, leaving off "when  
deemed appropriate," signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)



PRESIDENT CASSELL: Abstain?

(One hand was raised.)

MR. BRUNING: I had an amendment to (d).

PRESIDENT CASSELL: I called on you and you passed.

MR. BRUNING: I thought we were adopting the amendment or the revision, as suggested by delegate Kameny.

PRESIDENT CASSELL: Yes, sir, and then we called for a vote on the item, as amended.

MR. BRUNING: You're right.

MS. SIMMONS: (e), "Judicial Powers: "The Governor shall appoint, with the advice and consent of the Legislature, those judges as provided for in the Article on the Judiciary."

PRESIDENT CASSELL: Motion to adopt?

MS. SIMMONS: I move to adopt this.

(The motion was duly seconded.)

PRESIDENT CASSELL: Mason, Love, Corn. Delegate Mason?

MR. MASON: This may be a technical amendment which should be left to Style and Drafting, but I would move to strike the word "those," and instead of saying "on the Judiciary," leave a blank for a number and, when we find out what number that is, insert it.

MS. SIMMONS: Okay.

PRESIDENT CASSELL: Without objection?

MS. SIMMONS: Without objection.

PRESIDENT CASSELL: Delegate Love?

MR. LOVE: Mr. Chair, this proposal as it stands is inconsistent with the method of judicial appointment which we have voted on previously, which allows the governor to appoint judges, but says -- Mr. Jordan should correct me if I'm wrong on this -- allows the governor to appoint judges, but says nothing about the advice and consent of the legislature.

So, I would like to move to strike "with the advice and consent of the Legislature."

(The motion was duly seconded.)

MS. SIMMONS: The intent of the committee was to make this compatible with what the articles on judiciary did. So, we will simply strike that without the necessary --

PRESIDENT CASSELL: Without objection?

MS. SIMMONS: Yes.

MS. CORN: Mr. President?

PRESIDENT CASSELL: Yes?

MS. CORN: I would move to strike the entire section, since it is dealt with under the judiciary. By including it in here, it can only create problems that Style and Drafting will come back to you with later and say that there is an

inconsistency.

Since it has been dealt with fully under judiciary,  
I move to strike this -- the entire section.

PRESIDENT CASSELL: Is there a second to that?

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded  
that item (e) under VI be struck.

MS. SIMMONS: May I speak against the motion, Mr.  
President?

PRESIDENT CASSELL: Yes.

MS. SIMMONS: I would like to speak against the  
motion for the simple reason that to have a constitution  
which would suggest that in the executive powers, where the  
governor does have some powers -- to delete any reference to  
it is to act as if one were oblivious to this very significant  
third branch of the government in terms of our checks and  
balances.

MS. CORN: Mr. President?

MS. SIMMONS: May I finish my sentence?

"The Governor shall appoint judges as provided for  
in article" -- whatever that number is, which is the  
judiciary -- is an absolutely appropriate position. It also  
lets people know that there is no lack of understanding on

the part of the drafters of the constitution and that this is no oversight.

MS. CORN: Mr. President?

PRESIDENT CASSELL: Delegate Jordan?

MR. JORDAN: I don't know if I'm out of order, but the amendment that we approved the other night breaks the judiciary up so that we have justices and judges. I was just wondering if the language should be made consistent there: "Those justices and judges ..."

PRESIDENT CASSELL: Can we make that qualification without objection?

MS. SIMMONS: Yes.

MR. KAMENY: Yes.

PRESIDENT CASSELL: Schrag?

MR. SCHRAG: Delegate Corn, may I have your attention?

My understanding of the Jordan amendment which we passed the other night, and I so stated at the time the other night, was that when it says that the governor may appoint judges from the names submitted by the judicial nominating commission, it is with the advice and consent of the legislature, just like any other appointment.

In fact, I recall making a speech to this body

saying there was plenty of democracy in this process because the people's representatives in the legislature also had the opportunity to advise and consent with respect to that nomination. So, I think we should include that phrase just as it's written on the page by the committee here.

MS. CORN: Mr. President, I have a motion on the floor and it has been seconded. Please, either have people speak to that motion, all of it, or --

MS. SIMMONS: They can't, because you take up all the air time.

MS. CORN: Point of personal privilege, Mr. President.

PRESIDENT CASSELL: Let's not be dealing with personal privilege. The time is now 10:42.

MS. CORN: I'd like the motion spoken to or called.

PRESIDENT CASSELL: I heard you; you don't have to repeat that anymore, all right?

The motion on the floor now is to delete item (e). I think we've heard enough discussion. Are we ready for the vote? Those in favor of the motion, please signify by saying aye.

(There were three "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: Okay, the motion loses.

The original motion is on the floor to adopt item (e), as amended, "The Governor shall appoint justices and judges, as provided for in the article" -- whatever -- to be satisfied by Style and Drafting. Those supporting that --

MR. SCHRAG: Mr. President?

PRESIDENT CASSELL: Yes?

MR. SCHRAG: I think that we should leave in "with the advice and consent of the Legislature." The words "advice and consent" don't appear in the Jordan amendment.

PRESIDENT CASSELL: Do you accept that, delegate Simmons?

MS. SIMMONS: Yes, because that is certainly our intent.

PRESIDENT CASSELL: You made that point before.

MR. COOPER: We accepted an amendment by consensus in this body.

PRESIDENT CASSELL: As a matter of fact, we did.

MS. SIMMONS: Yes.

PRESIDENT CASSELL: We did accept an amendment by

— consensus to strike "with advice and consent of the Legislature." Also, we accepted by consent to add "justices" to "judges."

MS. SIMMONS: Right.

PRESIDENT CASSELL: And to eliminate "the Article on the Judiciary," and just put a number in. So, that's the amended motion that we have on the floor.

MR. CLARK: Point of order.

PRESIDENT CASSELL: Point of order? State your point.

MR. CLARK: You cannot adopt by consensus when you don't have a consensus.

PRESIDENT CASSELL: We did have a consensus.

MR. COOPER: We had a consensus.

PRESIDENT CASSELL: That's how it happens to be there.

MS. SIMMONS: Yes, at that time.

MR. CLARK: Mr. Chairman, I don't know that our rules provide for adoption by consensus, but certainly if the record reflects an objection, as it now does, you don't want to have had it adopted by consensus when the rules don't even provide for consensus.

PRESIDENT CASSELL: Well, of course, we could

— object tomorrow too, but objecting five minutes later is just as unreasonable as objecting tomorrow.

MR. CLARK: We could object tomorrow, after the whole section is passed. But the objection is being raised before the section is passed, so I would suggest that the appropriate way for that language to come out is for somebody who wants it to come out should move it out and have a vote on it, because objection now does appear on the record prior to the section's adoption.

You're calling for a motion to pass the section, as amended, and there's objection as to an amendment by consensus. Our rules don't provide for consensus, and I think if we want our record straight on the thing, somebody ought to move that amendment if that's what they want, and we ought to vote on it.

PRESIDENT CASSELL: All right. We're talking about sections, right? In fact, we're talking about an item in a section.

MS. SIMMONS: (e), yes.

PRESIDENT CASSELL: We cannot go back and rescind what action has been taken. This body voted to make that particular amendment by consensus, without objection. The Chair rules that that is a legitimate exercise, and the only



way you can change that now is to offer a motion to reconsider.

Delegate Schrag?

MR. SCHRAG: Mr. President, since you've said that this was done by consensus, I must have voted for it. Therefore, I can move reconsideration. I move reconsideration of the deletion of "with the advice and consent of the legislature."

PRESIDENT CASSELL: Delegate Jordan?

MR. JORDAN: Mr. Chair, I don't want to belabor the point. We have gone through this before. You cannot reconsider -- Phil Schrag knows this -- you can't make a motion to reconsider constitutional provisions. So, I don't know why he's bringing it up; he knows that we've argued this point. I'd just like to say that his point of order is out of order, Mr. Chair.

PRESIDENT CASSELL: Delegate Kameny?

MR. KAMENY: I would suggest that we bend the rules enough to satisfy everybody. If you will allow, somebody will second, and we will vote on it, that "with the advice and consent of the Legislature" be deleted. Let's get it done and out of the way.

(The motion was duly seconded.)

PRESIDENT CASSELL: It's all right. The Chair rules that rather than to be here after 11:00 arguing about this, I'll accept your motion.

MR. KAMENY: And that "justices" be added.

PRESIDENT CASSELL: Okay.

MR. KAMENY: Has somebody seconded it?

MS. SIMMONS: You did get a second.

MR. KAMENY: I call the question on the motion I just made.

MS. SIMMONS: I second that, too.

PRESIDENT CASSELL: There has to be some discussion. Discussion on that motion? Delegate Schrag?

MR. SCHRAG: Let me clarify it. Does the committee accept that judges are to be appointed with the advice and consent of the legislature, and therefore this motion should be defeated? The Kameny motion should be defeated because the committee accepts advice and consent on appointments, is that correct?

MS. SIMMONS: Right.

MR. SCHRAG: Okay. So, we should vote no on Kameny.

MS. SIMMONS: Kameny was trying to put that back in; Kameny was putting that it.

MR. SCHRAG: His motion was to take it out.

MR. KAMENY: My intent was to get the whole thing out of the way and move on.

PRESIDENT CASSELL: Let me ask a question myself. There's a motion on the floor, and that motion on the floor is the one offered by delegate Kameny that it shall read this way: "Judicial Powers: The Governor shall appoint justices and judges as provided for in Article" so-and-so, right?

Then there was a question raised as to whether the committee accepted it. My understanding was that the committee accepted it as it reads and as delegate Kameny had stated it, and that's what we were attempting to get accepted, inasmuch as I thought the committee had accepted the original consensus.

MS. SIMMONS: What we wanted was "with advice and consent." That's why we had that originally.

MS. GRAHAM: That's right.

MS. SIMMONS: And we thought that that was included when we talked about the articles. What delegate Schrag made clear to us is that it is not in the judicial articles. Therefore, it needs to remain here.

PRESIDENT CASSELL: All right. Now, this is the motion that is agreed to by the committee: "The Governor shall appoint justices and judges as provided for in Article" so-and-so. Those in favor of that, please signify by --

MS. SIMMONS: "With advice and consent of the Legislature."

MS. CORN: That's not Kameny's motion.

MS. SIMMONS: That's not Kameny's; I'm sorry.

MR. KAMENY: May I speak to my motion?

PRESIDENT CASSELL: You may speak to your motion.

MR. KAMENY: Yes. All that this accomplishes is that whatever is in Article III on appointment of judges, which is the place where judges and justices should be talked about and were talked about, and their manner of appointment should be defined and was defined, shall, in fact, prevail. That's what this says; nothing more and nothing less and nothing different. I suggest we vote it up and let's move on.

PRESIDENT CASSELL: Delegate Kameny, did I state your motion correctly?

MR. KAMENY: Yes, you did.

PRESIDENT CASSELL: All right. Shall I state it once more?

MR. KAMENY: As you may choose.

PRESIDENT CASSELL: For purposes of clarification, let's hear what it said before the amendments. Before the amendments, it said, "Judicial Powers: The Governor shall appoint, with the advice and consent of the Legislature, those

judges as provided for in the Article on the Judiciary."

The motion on the floor now is to revise that to read, item number (e), line 22: "Judicial Powers: The Governor shall appoint justices and judges as provided for in Article," then there's a blank line and a period so that you can put in the number of the article. Is that clear now?

Does that represent your motion accurately and fairly?

MR. KAMENY: Yes.

PRESIDENT CASSELL: Those in favor of that motion --

MR. CLARK: Point of information.

PRESIDENT CASSELL: Point of information? State your point, please.

MR. CLARK: You said before that the committee was in support of the Kameny motion. I want to know whether the committee supports or opposes the Kameny motion.

MS. SIMMONS: We oppose the Kameny motion.

PRESIDENT CASSELL: You have your answer now.

Delegate Jordan?

MR. JORDAN: I was just going to speak in favor of it.

MS. CORN: I want to speak in favor of the Kameny motion.

PRESIDENT CASSELL: All right. Delegate Jordan, delegate Corn, and then we're going to vote.

MR. JORDAN: Mr. Chair, I don't want to take up a lot of time of the delegates here, but the article, as I understood it the other day, was for a varied system. We retained that, and there was nothing in my proposal or the Alaska proposal that required review of this appointment by the legislative branch.

My concern is that in some way, this will lessen the impact of the process for selecting judges, and it could ultimately create conflicts with those provisions that are in Section III that we voted for the other day. Now, I don't know why the position is being supported; that is to say, if there has been an empirical data or anything else.

I think we can see the position that the committee has taken. In one instance it has been supported, but in another instance it hasn't. I think that indicates that it is not based on any real hard, fast evidence that says this is good or bad, but more or less on some political considerations at this point.

So, if we're going to be political about it, I would suggest that we be consistent with the provisions that we voted for the other day, and that is to keep a strong process

whereby citizens will be the determining factor, because if we accept that the legislature is going to be involved in this, then we're going to bring into it some of the things that we said we didn't want to do the other day, and that is to politicize the process. Thank you very much.

PRESIDENT CASSELL: Delegate Corn?

MS. CORN: I strongly urge you to vote for the Kameny amendment, the reason being that in the judiciary article --

PRESIDENT CASSELL: Hold on just a minute now. There's an awful lot of buzzing. The time is 10:53. The elevator stops running, and we have to get out of here by 11:00, which is seven more minutes. Please, let's see if we can dispose of this section before we leave.

MS. CORN: If you vote against the Kameny motion, you will be voting to change what we voted on in the judiciary section. In the judiciary section, we voted a clear outline of how judges and justices shall be appointed. There was a commission set up. A certain amount of those people on the commission -- excuse me, delegate Schrag, may I have the floor?

We voted a specific organization of a commission and its composition, and that commission would appoint judges

— and justices. If you include this language, "with the advice and consent of the Legislature," there is no two ways about it that Style and Drafting will come back to you and say, "Which one did you want? Did you want the commission or did you want the governor to appoint with the advice and consent of the legislature?" You cannot have both.

Whether you voted for the judiciary or not, since it was voted up you must vote up the Kameny motion and vote down "with the advice and consent of the Legislature."

PRESIDENT CASSELL: All right. Are you ready to vote on this item? Those in favor of the amended motion, signify by raising your hands, please.

MR. SCHRAG: The amendment.

MS. CORN: The Kameny motion.

PRESIDENT CASSELL: Yes, the Kameny motion; thank you. Those in favor of the Kameny amended motion?

(Pause.)

PRESIDENT CASSELL: Please keep your hands up so we can count them.

MR. COOPER: Fourteen.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Five.

PRESIDENT CASSELL: Abstain?



MR. COOPER: One.

PRESIDENT CASSELL: Okay, the amended motion carries.

It is now 10:55 and we have to adjourn this meeting.

MS. GRAHAM: Did we adopt the whole section, Mr. President?

PRESIDENT CASSELL: Yes, we did.

MS. GRAHAM: I don't think we did. I move we adopt the whole section.

MS. SIMMONS: I would like to move that Section VI, "Powers of the Governor," as amended, be adopted.

(The motion was duly seconded.)

PRESIDENT CASSELL: Those in favor of the motion to adopt Section VI, as amended, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(There was one "nay.")

PRESIDENT CASSELL: Abstain?

(No response.)

MS. SIMMONS: I would like to correct the record that the corporation counsel did not argue on behalf of the Board of Education when we won that case. We had to get our own attorney, so I want the record to be correct.

PRESIDENT CASSELL: We meet tomorrow at 6:00. I shall be here at that time. I hope everybody will be here at 6:00 and perhaps we can get out by 10:00.

MR. COOPER: Mr. President, I move that we adjourn.

(The motion was duly seconded.)

PRESIDENT CASSELL: Those in favor?

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

(Whereupon, at 10:55 p.m., the Convention was adjourned, to reconvene on May 4, 1982 at 6:00 p.m.)